

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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BRENDAN R. COENEN,

Plaintiff,

v.

NAPHCARE, *et al.*,

Defendants.

Case No. 3:22-cv-00429-MMD-CSD

ORDER

*Pro se* Plaintiff Brendan R. Coenen brings this civil rights action under 42 U.S.C. § 1983 to redress constitutional violations he claims to have suffered while incarcerated at the Washoe County Detention Facility. (ECF No. 1-2.) On December 9, 2022, this Court ordered that, on or before January 10, 2023, Coenen must (1) update his address and (2) either file a fully complete application to proceed *in forma pauperis* (“IFP”) for non-prisoners or pay the full filing fee of \$402. (ECF No. 3.) That deadline expired without an updated address, IFP application for non-prisoners, or the \$402 filing fee from Coenen, and his mail from the Court is being returned as undeliverable. (See ECF No. 4.)

**I. DISCUSSION**

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of L.A.*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to dismiss an

1 action on one of these grounds, the Court must consider: (1) the public's interest in  
2 expeditious resolution of litigation; (2) the Court's need to manage its docket; (3) the risk  
3 of prejudice to the defendants; (4) the public policy favoring disposition of cases on their  
4 merits; and (5) the availability of less drastic alternatives. *See In re Phenylpropanolamine*  
5 *Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone*, 833 F.2d at 130).

6 The first two factors, the public's interest in expeditiously resolving this litigation  
7 and the Court's interest in managing its docket, weigh in favor of dismissal of Coenen's  
8 claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal  
9 because a presumption of injury arises from the occurrence of unreasonable delay in filing  
10 a pleading ordered by the Court or prosecuting an action. *See Anderson v. Air West*, 542  
11 F.2d 522, 524 (9th Cir. 1976). The fourth factor, the public policy favoring disposition of  
12 cases on their merits, is greatly outweighed by the factors favoring dismissal.

13 The fifth factor requires the Court to consider whether less drastic alternatives can  
14 be used to correct the party's failure that brought about the Court's need to consider  
15 dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining  
16 that considering less drastic alternatives *before* the party has disobeyed a court order  
17 does not satisfy this factor); *accord Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th  
18 Cir. 2002) (explaining that "the persuasive force of" earlier Ninth Circuit cases that  
19 "implicitly accepted pursuit of less drastic alternatives prior to disobedience of the court's  
20 order as satisfying this element[.]" *i.e.*, like the "initial granting of leave to amend coupled  
21 with the warning of dismissal for failure to comply[.]" have been "eroded" by *Yourish*).  
22 Courts "need not exhaust every sanction short of dismissal before finally dismissing a  
23 case, but must explore possible and meaningful alternatives." *Henderson v. Duncan*, 779  
24 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed without  
25 the ability of the Court and the defendants to send Coenen case-related documents,  
26 filings, and orders, the only alternative is to enter a second order setting another deadline.  
27 But without an updated address, the likelihood that the second order would even reach  
28 Coenen is low, so issuing a second order will only delay the inevitable and further

1 squander the Court's finite resources. Setting another deadline is not a meaningful  
2 alternative given these circumstances. So the fifth factor favors dismissal.

3 **II. CONCLUSION**

4 Having thoroughly considered these dismissal factors, the Court finds that they  
5 weigh in favor of dismissal. It is therefore ordered that this action is dismissed without  
6 prejudice based on Plaintiff Brendan R. Coenen's failure to file an updated address and  
7 either an IFP application for non-prisoners or the \$402 filing fee in compliance with this  
8 Court's December 9, 2022, order. The Clerk of Court is directed to enter judgment  
9 accordingly and close this case. No other documents may be filed in this now-closed  
10 case. If Coenen wishes to pursue his claims, he must file a complaint in a new case and  
11 provide the Court with his current address.

12 DATED THIS 12<sup>th</sup> Day of January 2023.

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15 MIRANDA M. DU  
16 CHIEF UNITED STATES DISTRICT JUDGE  
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